

COPY FOR
CERTIFICATION

FILED
March 23 2009 - 4:30 pm
MICHAEL K. JEANES, Clerk
By L. F. Furrillo
Deputy

TERRY GODDARD
The Attorney General
Firm No. 14000

Sandra R. Kane, No. 007423
Assistant Attorney General
Civil Rights Division
1275 West Washington Street
Phoenix, AZ 85007
Telephone: (602) 542-8862
CivilRights@azag.gov
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA *ex rel.* TERRY
GODDARD, the Attorney General; and THE
CIVIL RIGHTS DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

Plaintiff,

v.

THE SCOTTSDALE CONDOMINIUM
ASSOCIATION, an Arizona nonprofit
corporation; WILLIAM J. WALSH and JANE
DOE WALSH, husband and wife,

Defendants.

No. CV2008-015374

CONSENT DECREE

(Assigned to Hon. Sam Myers)

(Mandatory e-filing)

Plaintiff, the State of Arizona, through Attorney General Terry Goddard and the Civil Rights Division (collectively "the State"), filed this action against Defendants, The Scottsdale Condominium Association and William J. Walsh and Jane Doe Walsh, alleging that they engaged in disability discrimination against Marjorie Kerns, a former tenant of the Scottsdale Condominiums, in violation of A.R.S. § 41-1491.19 of the Arizona Fair Housing Act, when

1 they failed to grant her a disability-related reasonable accommodation that would have
2 authorized her to park in the guest parking area near the elevator entrance to her building rather
3 than in a distant assigned parking space behind the building. The State further alleged that
4 Defendants harassed, intimidated and retaliated against Marjorie Kerns for requesting the
5 reasonable accommodation and for filing a fair housing complaint with the Civil Rights
6 Division against Defendants, and that Defendants engaged in a pattern or practice of
7 discrimination against Ma. Kerns and other disabled residents, in violation of A.R.S. §§ 41-
8 1491.18, 41-1491.19, and 41-1491.35 of the Arizona Fair Housing Act.

9 Defendant, The Scottsdale Condominium Association ("TSCA"), is an Arizona non-
10 profit corporation which manages the common areas of the Scottsdale Condominiums located
11 at 6125 E. Indian School Rd., Scottsdale, Arizona, in Maricopa County. Defendant William J.
12 Walsh ("Mr. Walsh") is and, at all relevant times, has served as President of TSCA's Board of
13 Directors and TSCA's Property Manager. Walsh is married and performed actions relevant to
14 the Complaint for and on behalf of his marital community with Defendant Jane Doe Walsh,
15 whose true name is Gloria Walsh ("Mrs. Walsh"). Mrs. Walsh was served and appeared as a
16 Defendant in this action.

17 The State and the Defendants (collectively "the parties") desire to resolve the issues
18 raised by the Complaint without the time, expense and uncertainty of further contested
19 litigation. The parties expressly acknowledge that this Decree is the compromise of disputed
20 claims and Defendants acknowledge no wrongdoing whatsoever. The Defendants agree to be
21 bound by this Decree and not to contest that it was validly entered into in any subsequent
22 proceeding to implement or enforce its terms. The parties, therefore, have consented to entry of
23 this Decree, waiving trial, findings of fact, and conclusions of law.

24 It appearing to the Court that entry of this Decree will further the objectives of the
25 Arizona Fair Housing Act, and that the Decree fully protects the parties and the public with
26 respect to the matters within the scope of this Decree,

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1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

2 ***JURISDICTION***

3 1. This Court has jurisdiction over the subject matter of this action and over the
4 parties, and venue in Maricopa County is proper. The allegations of the Complaint, if proved,
5 are sufficient to state a cause of action against Defendants.

6 ***RESOLUTION OF THE COMPLAINT***

7 2. This Decree resolves all issues and claims set forth in the State's Complaint filed
8 in this case, and issues and claims, whether known or unknown, that were required to be raised,
9 or that could have been raised under the Arizona Fair Housing Act or the Federal Fair Housing
10 Act with respect to the administrative fair housing complaint filed against Defendants by
11 Marjorie Kerns, including the State's pattern or practice claim under the Arizona Fair Housing
12 Act..

13 ***NO DISCRIMINATION***

14 3. Consistent with the meanings of A.R.S. § 41-1491, et seq., Defendants shall abide
15 by the Arizona Fair Housing Act and shall not engage in housing discrimination based upon
16 race, color, religion, sex, national origin, familial status, or disability. Defendants shall grant
17 requests for reasonable accommodation and for reasonable modification for disabled persons in
18 accordance with the Arizona Fair Housing Act, including reasonable accommodations in guest
19 parking rules for disabled residents, whether the residents are tenants or unit owners.

20 ***NO RETALIATION***

21 4. Defendants shall not directly or indirectly engage in retaliation, harassment or
22 intimidation of any kind in violation of the Arizona Fair Housing Act against Marjorie Kerns,
23 the Alvarado family (S.J., Gracie and Michael Alvarado), or against any other person because
24 of the matters raised in the State's Complaint or because he or she has opposed any practice
25 reasonably believed by him or her to be unlawful under A.R.S. §§ 41-1491.14 through 41-
26 1491.21, or because he or she has given testimony or assistance, or participated in any manner
27 in any investigation or proceeding under the Arizona Fair Housing Act.
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1 ***MONETARY RELIEF FOR AGGRIEVED PARTY***

2 5. Defendants shall pay the sum certain of Sixty-Five Thousand Dollars
3 (\$65,000.00) to Marjorie Kerns as and for her personal injuries, by means of an insurance
4 company check made payable to Marjorie Kerns and delivered to Sandra R. Kane, Assistant
5 Attorney General, Civil Rights Division, 1275 W. Washington, Phoenix, AZ 85007, or her
6 successor, upon entry of this Consent Decree.

7 ***MONITORING FEES FOR STATE***

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9 6. Defendants shall, upon entry of this Consent Decree, pay the State the sum
10 certain of Ten Thousand Dollars (\$10,000.00) to monitor Defendants' compliance with this
11 Decree and to enforce and advance civil rights in Arizona. Payment shall be made by means of
12 an insurance company check made payable to the Attorney General's Office, and delivered in
13 the manner set forth in Paragraph No. 5.

14 ***POLICY CHANGES***

15 7. Within thirty (30) days of the effective date of this Consent Decree, Defendants
16 shall submit to the State a proposed written policy and procedure for granting requests for
17 reasonable accommodation and reasonable modification from disabled residents of Scottsdale
18 Condominiums, including tenants and unit owners. Within ten (10) business days from receipt
19 of the proposed written policy and procedure, the State shall submit comments on the proposed
20 policy and procedure to Defendants. Within ninety (90) days of the effective date of this
21 Consent Decree, Defendants shall adopt a written policy and procedure for granting requests for
22 reasonable accommodation and reasonable modification from disabled residents, including
23 tenants and unit owners ("the Policy"). The Policy shall include all of the following:

24 (a) A statement of TSCA's duty under the Arizona and Federal Fair Housing Acts to
25 grant requests for reasonable accommodations in rules, policies, practices and services when
26 necessary for individuals with disabilities to have equal opportunity to use and enjoy their
27 dwelling, including the common areas;
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1 (b) A statement of TSCA's duty under the Arizona and Federal Fair Housing Acts to
2 grant requests for disability-related reasonable modifications, at no cost to TSCA, when needed
3 by individuals with disabilities;

4 (c) A statement that all residents, including tenants and unit owners, may make
5 requests directly to TSCA for reasonable accommodations and reasonable modifications
6 without fear of retaliation, harassment or intimidation in accordance with the Arizona and
7 Federal Fair Housing Acts;

8 (d) A form developed by TSCA and pre-approved by the State for use by individuals
9 with disabilities in making requests for reasonable accommodation and reasonable
10 modification;

11 (e) A requirement that persons who make verbal requests for reasonable
12 accommodation or reasonable modification put their requests in writing using the form
13 developed in accordance with Paragraph No. 7(d), provided that TSCA makes the form
14 available to all persons who make verbal requests for reasonable accommodation and
15 reasonable modification and TSCA also makes reasonable accommodations for any persons
16 who are unable to put their requests for reasonable accommodation or reasonable modification
17 in writing due to disability;

18 (f) A designated person who has received fair housing training and shall receive and
19 maintain all disability-related requests for reasonable accommodation and reasonable
20 modification, respond to each such request within ten (10) days from the date of the request,
21 and maintain all correspondence related to requests for reasonable accommodation and
22 reasonable modification, including TSCA's response to each request;

23 (g) A provision stating that if a disability-related need for a requested reasonable
24 accommodation or reasonable modification is obvious, TSCA shall not request additional
25 information to confirm the need for the request;

26 (h) A provision stating that if a disability-related need for the requested reasonable
27 accommodation or reasonable modification is not obvious, TSCA may ask for additional
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1 information, including information from the requesting person's healthcare provider, to confirm
2 that the requested accommodation or requested modification may be needed due to the
3 disability of the requesting person. The requesting person or the requesting person's healthcare
4 provider will not be required to release copies of the requesting person's medical records to
5 TSCA. Any medical information received by TSCA shall be kept confidential;

6 (i) Compliance with the HUD/DOJ joint statements on reasonable accommodation
7 and reasonable modification, including the interactive process to determine a reasonable
8 accommodation or modification for the disabled person's disability if the requested
9 accommodation or modification is not reasonable;

10 (j) Retention of files regarding all requests for reasonable accommodation or
11 modification;

12 (k) A statement that residents, including tenants, may contact the Civil Rights
13 Division of the Attorney General's Office, 1275 W. Washington, Phoenix, AZ 85007, or by
14 telephone at 602-542-5263, to file complaints should TSCA fail or refuse to grant disability-
15 related requests for reasonable accommodation or reasonable modification; and

16 ***NOTICE TO RESIDENTS***

17 8. Upon entry of this Consent Decree, TSCA shall post copies of a fair housing
18 poster provided by the Civil Rights Division on the bulletin boards of its buildings and in a
19 conspicuous location in its clubhouse.

20 9. Within sixty (60) days of the effective date of this Consent Decree, shall post a
21 copy of the Policy on the bulletin boards of its buildings, mail or email the Policy to all
22 Association members, and put a copy of the Policy on or near the doors of all residents of
23 Scottsdale Condominiums.

24 10. Thereafter, TSCA shall add the Policy to its written rules and regulations.

25 ***TRAINING***

26 11. Within one hundred twenty (120) days of the effective date of the Consent
27 Decree, all TSCA Board Members and Property Managers, including the designated person
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1 under the Policy referred to in Paragraph 7(f) shall attend a minimum of 1.5 to 2 hours of
2 training on the Arizona and Federal Fair Housing Acts, with emphasis on disability
3 discrimination and the Policy. The training shall be conducted by the Civil Rights Division at
4 the Scottsdale Condominiums, and TSCA shall make the training available to members of the
5 Association. TSCA shall post notice of the training on the bulletin boards of its buildings and
6 in a conspicuous location in its clubhouse at least one week prior to the training. TSCA shall
7 also give notice of the training wherever TSCA customarily provides notice of its meetings.

8 ***MONITORING***

9 12. The State shall monitor Defendants' performance for compliance with Paragraphs
10 3-11 of this Consent Decree. Upon request of the State, Defendants shall make their records
11 regarding requests for reasonable accommodation and reasonable modification, correspondence
12 and the outcome of such requests available for review and inspection by the State.

13 ***COSTS***

14 13. The parties shall bear their respective attorneys fees and costs incurred in this
15 action up to the date of entry of this Consent Decree. In any action brought to assess or enforce
16 Defendants' compliance with the terms of this Consent Decree, the Court in its discretion may
17 award costs and reasonable attorneys' fees to the prevailing party.

18 ***NOTICES***

19 14. When this Consent Decree requires the submission of payments, notices, or
20 materials for review by the State, they shall be mailed to: Sandra R. Kane, Assistant Attorney
21 General, Civil Rights Division, 1275 W. Washington, Phoenix, AZ 85007, or to her
22 successor(s). When this Consent Decree requires the submission of materials for review by the
23 Defendants, they shall be mailed to: William D. Holm, Esq. and Shaye Mann, Esq., Jones,
24 Skelton & Hochuli, P.L.C., 2901 N. Central Ave., Suite 800, Phoenix, AZ 85012.

25 ***CONTINUING JURISDICTION OF THIS COURT***

26 15. The Court shall retain jurisdiction over both the subject matter of this Consent
27 Decree and the parties for a period of three years from the date of entry of the Consent Decree
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1 to effectuate and enforce this Decree. The State may, for good cause shown, petition this Court
2 for compliance with this Decree at any time that the Court maintains jurisdiction over this
3 action. In the event that Defendants fail to comply with the requirements of this Consent
4 Decree, the parties will engage in good faith efforts to resolve the delay. If, however, the good
5 faith efforts to resolve Defendants' alleged failure to comply are unsuccessful, the State may
6 petition the Court to seek compliance with the Decree. For purposes of this paragraph, good
7 faith efforts shall mean that the State shall notify the Defendants in writing of the alleged
8 failure to comply with specific requirements of the Decree. Defendants shall have fifteen (15)
9 days to respond in writing and to reach agreement with the State to cure any alleged failure to
10 comply with this Decree. If, however, the good faith efforts to resolve the alleged failure to
11 comply are unsuccessful, the State may petition the Court to seek compliance with the Decree.
12 Should the Court determine that Defendants have not complied with this Consent Decree,
13 appropriate relief, including but not limited to extension of this Consent Decree for such period
14 as may be necessary to remedy the non-compliance, may be ordered. However, if Mr. Walsh is
15 no longer on TSCA's Board of Directors, has no role in property management, and he and Mrs.
16 Walsh are no longer otherwise personally involved in connection with the issues in the Consent
17 Decree, then Mr. and Mrs. Walsh shall have no responsibility for any subsequent failure of
18 Defendant TSCA to perform the obligations of this Consent Decree. In the event the State does
19 not petition for compliance with the Consent Decree or the Court determines that Defendants
20 are in compliance, this Consent Decree shall expire by its own terms at the end of three years
21 from entry of the Consent Decree, without further action of the parties, at which point the
22 State's complaint against Defendants shall be deemed dismissed with prejudice.

23 ***CHOICE OF LAW***

24 16. This Consent Decree shall be governed in all respects whether as to validity,
25 construction, capacity, performance or otherwise by the laws of the State of Arizona.

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CONSENT TO DECREE

1. On behalf of Defendant The Scottsdale Condominium Association, I acknowledge that I have read the foregoing Consent Decree, and that Defendant The Scottsdale Condominium Association is aware of its right to a trial in this matter and has waived that right.

2. Defendant The Scottsdale Condominium Association agrees to the jurisdiction of the Court, and consents to entry of this Consent Decree.

3. Defendant The Scottsdale Condominium Association states that no promise of any kind or nature whatsoever (other than the terms of this Consent Decree) was made to induce it to enter into this Consent Decree, that it has entered into this Consent Decree voluntarily, and that this Consent Decree constitutes the entire agreement between Defendants and the State.

4 I am the PRESIDENT of The Scottsdale Condominium Association, and, as such, have been authorized by The Scottsdale Condominium Association to enter into this Consent Decree for and on behalf of The Scottsdale Condominium Association.

DATED this 19 day of MARCH, 2009.

THE SCOTTSDALE CONDOMINIUM ASSOCIATION
an Arizona non-profit corporation

By William J. Walsh
Its PRESIDENT

State of Arizona)
) SS.
County of Maricopa)

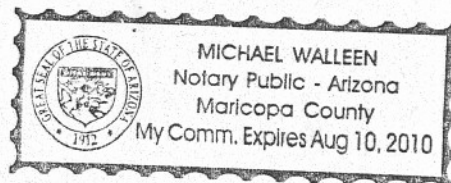
SUBSCRIBED AND SWORN to before me this 19th day of March, 2009, by William J. Walsh.

[Signature]

Notary Public

My Commission Expires:

8/10/2010



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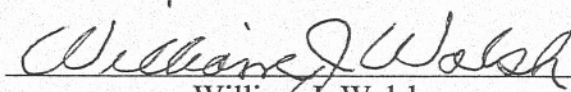
CONSENT TO DECREE

1. I WILLIAM J. WALSH acknowledge that I have read the foregoing Consent Decree, and that I am aware of my right to a trial in this matter and have waived that right.

2. I agree to the jurisdiction of the Court, and consent to entry of this Consent Decree.


3. I hereby state that no promise of any kind or nature whatsoever (other than the terms of this Consent Decree) was made to induce me to enter into this Consent Decree, that I have entered into this Consent Decree voluntarily, and that this Consent Decree constitutes the entire agreement between Defendants and the State.

4. I further state that I have been represented by counsel in this case, and that the terms of this Consent Decree have been explained to me to my satisfaction, and are fully understood by me.

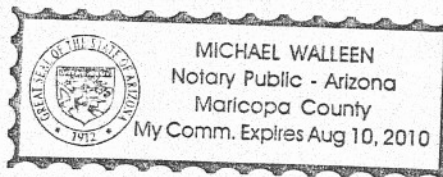

William J. Walsh

State of Arizona)
) SS.
County of Maricopa)

SUBSCRIBED AND SWORN to before me this 19th day of March,
2009, by William J. Walsh.


Notary Public

My Commission Expires:
8/10/2010



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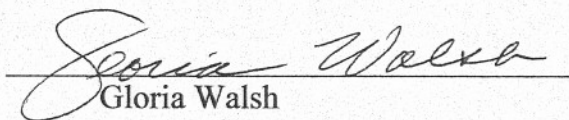
CONSENT TO DECREE

1. I GLORIA WALSH acknowledge that I have read the foregoing Consent Decree, and that I am aware of my right to a trial in this matter and have waived that right.

2. I agree to the jurisdiction of the Court, and consent to entry of this Consent Decree.

3. I hereby state that no promise of any kind or nature whatsoever (other than the terms of this Consent Decree) was made to induce me to enter into this Consent Decree, that I have entered into this Consent Decree voluntarily, and that this Consent Decree constitutes the entire agreement between Defendants and the State.

4. I further state that I have been represented by counsel in this case, and that the terms of this Consent Decree have been explained to me to my satisfaction, and are fully understood by me.


Gloria Walsh

State of Arizona)
) SS.
County of Maricopa)

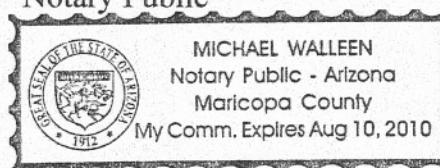
SUBSCRIBED AND SWORN to before me this 19th day of March, 2009, by Gloria Walsh.



Notary Public

My Commission Expires:

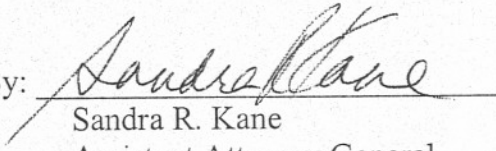
8/10/2010



APPROVED AS TO FORM AND SUBSTANCE

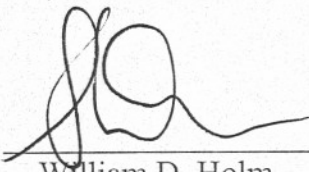
TERRY GODDARD
Attorney General

3/23/09
Date

By: 
Sandra R. Kane
Assistant Attorney General
Civil Rights Division
1275 W. Washington Street
Phoenix, Arizona 85007
Attorney for Plaintiff

JONES, SKELTON & HOCHULI, P.L.C.

3/20/09
Date

By: 
William D. Holm
Shaye Mann
2901 North Central Ave., Suite 800
Phoenix, Arizona 85012
Attorneys for Defendant

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